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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,000	09/26/2001	William Younger Guess		3019

7590 07/08/2004
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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/964,000	Applicant(s) GUESS, WILLIAM YOUNGER	
	Examiner Drew E Becker	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/28/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The declaration under 37 CFR 1.132 filed May 28, 2004 is insufficient to overcome the rejection of claims 22-31 based upon Lovell, Haig, Holbrook, AAPA, and Giuliano Bugialli as set forth in the last Office action because: it fails to set forth facts pertaining to the above references and the facts presented are not germane to the rejection. It include(s) statements which amount to an affirmation that the affiant (or in this case, a third party) has never seen the claimed subject matter before. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716. It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.
2. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.
3. The amendment filed May 28, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: new paragraphs 0010, 0039.1, and 0039.2.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 24 and 30-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's specification does not appear to disclose "a weight of at least 20% percent" or "means for highlighting".

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 22-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 22 recites "a significant proportion of protein". It is not clear what level of protein would be considered "significant".

9. Claims 24 and 31 recite "means for highlighting". It is not clear what component this refers to.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 22-23 and 30-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Lovell [Pat. No. 3,615,692].

Lovell teaches a food comprising a first elongate muscle mass (Figure 2, #5), a second elongate muscle mass which inherently provided means to determine the boundary (Figure 4, #40; column 2, line 31), and the second muscle mass inherently being at least 20% of the weight as evidenced by its being greater than 20% of the total volume (Figure 4).

12. Claims 22, 24 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Holbrook [Pat. No. 6,599,545].

Holbrook teaches a food comprising a first elongate muscle mass (Figure 1, #14; column 3, line 14), a boundary means (Figure 6, #50), and a second elongate muscle mass which inherently provided means to determine the boundary (Figure 9, #18; column 3, line 14).

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13. Claim 31 is rejected under 35 U.S.C. 102(e) as being anticipated by Haig [Pat. No. 6,582,741].

Haig teaches a food comprising a first elongate food mass in the form of a pork loin (Figure 1, #25; column 2, line 20) and a second elongate muscle mass which inherently provided means to determine the boundary (Figure 1, #23).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 22, 24, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig in view of Holbrook.

Haig teaches a food comprising a first elongate food mass in the form of a pork loin (Figure 1, #25; column 2, line 20), a second elongate food mass which inherently provided means to determine the boundary (Figure 1, #23), and the second food mass inherently being at least 20% of the weight as evidenced by its being greater than 20% of the total volume (Figure 1). Haig does not teach the second food being meat.

Holbrook teaches a food comprising a first elongate muscle mass (Figure 1, #14; column 3, line 14) and a second elongate muscle mass which inherently provided means to determine the boundary (Figure 9, #18; column 3, line 14). It would have been obvious to one of ordinary skill in the art to incorporate the meat filling of Holbrook into

the invention of Haig since both are directed to meat products, since Haig already included a food stuffing (Figure 1, #23), and since Holbrook teaches that meats were commonly stuffed with other meats (column 3, lines 10-21).

16. Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, in view of Holbrook, as applied above, and further in view of Applicant's Admitted Prior Art [pages 1-3 of the specification].

Haig and Holbrook teach the above mentioned components. Haig and Holbrook do not recite top loin, tenderloin, rib sections, longissimus dorsi, or psoas major. Applicant's Admitted Prior Art (AAPA) teaches that commonly used cuts of meat included top loin, tenderloin, rib sections, longissimus dorsi, or psoas major (pages 1-3 of the specification). It would have been obvious to one of ordinary skill in the art to use the above listed meats in the invention of Haig, in view of Holbrook, since all are directed to food products, since Haig already include the use of pork loin (column 2, line 20), since Holbrook already included the use of meat for both the first and second foods (column 3, lines 10-21), and since these meats were all commonly used in the culinary arts.

17. Claims 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, in view of Holbrook, as applied above, and further in view of Giuliano Bugialli's Techniques of Italian Cooking.

Haig and Holbrook teach the above mentioned components. Haig and Holbrook do not recite slicing into steaks. Giuliano Bugialli's Techniques of Italian Cooking teaches slicing a roast into steaks (page 287). It would have been obvious to one of ordinary skill in the art to incorporate the steak slicing of Bugialli into the invention of Haig since both

are directed to food products, since Haig already included a pork loin roast (column 2, line 20), and since roasts were commonly sliced into steaks as shown by Bugialli (page 287).

Response to Arguments

18. Applicant's arguments filed May 28, 2004 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the inner meat being a whole intact muscle, or steaks of a particular size or usage) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that Holbrook is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed

invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Holbrook is directed to a food product with an inner foodstuff and an outer foodstuff, wherein the foodstuffs can be meat (column 3, line 15; Figure 2).

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Drew E Becker
Primary Examiner
Art Unit 1761

